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SUBJECT: GOS MINISTER MICHAEL MAKUEI OFFERS PESSIMISTIC UPDATE ON  
CPA BENCHMARKS

REF: A. Khartoum 785

1B. Khartoum 634

1C. Khartoum 562

1D. Khartoum 240

11. (U) SUMMARY: On June 24, Michael Makuei Lueth, the Government of Southern Sudan's (GOSS) Minister of Legal Affairs and Constitutional Development, gave a pessimistic update to the Southern Sudan Legislative Assembly (SSLA) on the stalled negotiations to adopt and revise legislation needed to implement the 2010 elections and the 2011 referendum on southern self-determination. Makuei called the 2010 election "in question," citing delays in launching voter registration, demarcating borders, and revising problematic laws. He also conveyed strong SPLM preferences to provide a clear legislative framework governing the referendum; to minimize the national government's role in conducting the referendum; and to postpone post-CPA arrangements until after the referendum's result is known. END SUMMARY.

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REFERENDUM COMMISSION: SOUTHERN APPOINTEES AND HEADQUARTERS  
PREFERRED  
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12. (U) Makuei's remarks came as one of several responses from GOSS ministers during the SSLA's open session on June 24. He focused on the stalled negotiations between the Sudan People's Liberation Movement (SPLM) and the National Congress Party (NCP) to implement the southern referendum on self-determination, regarding which the CPA left several key issues unresolved. Makuei identified the composition of the Referendum Commission, the process of nominating its members, the location and function of its offices, referendum-day polling locations, and the arrangements for post-referendum governance as the key points of contention (refs B and C).

13. (U) The SPLM has proposed a nine-member Referendum Commission, including three nominated by the Government of National Unity (GNU) and six (including the chairperson) nominated by the GOSS. The NCP, instead, has proposed a commission of 15, Makuei reported, including ten members nominated by the GNU and five by the GOSS, with two of the members serving as co-chairs. Makuei rejected such a joint chairmanship, noting that the CPA identifies only the National Constitutional Review Commission (NCRC) and the National Petroleum Commission as jointly-chaired bodies. While the NCP wants the referendum commission's GNU-appointed members to be selected by the Presidency, Makuei insisted that it be further spelled out that this means members can only be nominated with the First Vice President's consent.

¶4. (U) The two parties have agreed that the Commission will be seated in Khartoum, and have an office in Juba. Makuei reported, however, that the NCP continues to resist the SPLM's proposal that the Juba office be an operations center charged with executing as much of the referendum process as possible, with powers clearly assigned to it by law.

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THE REFERENDUM: VOTE ONLY IN THE SOUTH, NEGOTIATE THE DAY AFTER  
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¶5. (U) Makuei said to substantial applause that the SPLM opposes the NCP's proposal that Southern Sudanese be able to vote in selected population centers outside Southern Sudan. (COMMENT: Indeed, the SPLM's draft referendum legislation specifically prohibits voting - even by Southerners in the Diaspora - outside of Sudan. END COMMENT.) He took the opportunity to criticize the still-disputed census results, arguing that the controversially low number of southerners reported to be living in the north undercuts the NCP's argument that voting needs to take place outside the south.

¶6. (U) Finally, on a major point of strategy, Makuei argued against the NCP's proposal that the referendum law should specify post-referendum governance arrangements. Makuei said that the SPLM sees these as "a separate issue" and prefers to handle them in a separate agreement once the referendum's outcome is known. (NOTE: The SPLM draft law on the South's referendum includes language that supports the conduct of the Referendum on January 9, 2011, with a six month period to establish modalities for separation or continued unification by July 9, 2011 (ref C). END NOTE.)

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KHARTOUM 00000794 002 OF 003

#### MAKING ARRANGEMENTS FOR THE THREE AREAS

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¶7. (U) Makuei also addressed disagreement over implementation of the Abyei referendum and the Blue Nile and Southern Kordofan popular consultations. Makuei said that the SPLM believes the Abyei referendum should be governed in the same way as the southern Sudan referendum: with an implementing law, rather than under a presidential order, as the NCP proposes. Makuei's position was similar on the two popular consultations, insisting that a national law that would provide uniform procedures across both states is needed, rather than allowing the states to develop their own, as the NCP is purported to have proposed. [Note: The SPLM has developed draft legislation for the Abyei Referendum and the popular consultations in Southern Kordofan and Blue Nile, but the NCP continues to make an argument that such legislation is not necessary (ref D). End Note.]

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2010 ELECTIONS: ENABLING ENVIRONMENT NOT YET SATISFACTORY  
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¶8. (U) Delays in legislative reforms provoked Makuei to express concern over limited progress toward the 2010 elections, which he said are "in question." The stalemate over the National Security Service's (NISS) arrest powers remains contentious. According to the Minister, the SPLM has offered to "agree to disagree" on this issue by submitting to the National Assembly a bill that the SPLM finds unacceptable. The NCP has so far resisted this approach, preferring to have the cover of SPLM consent rather than using its majority to pass the bill over SPLM objections. In reference to revising the Popular Defense Forces Law, the Popular Police Law, and the Public Order Law, Makuei reported being told by a "very senior" northern official (an oblique reference to Bashir), "Don't attempt to move on these laws."

¶9. (U) Makuei also criticized the National Election Commission for starting to work on constituency delimitation in what he said is the absence of consensus in the Presidency on the census results (ref A). SSLA Speaker James Wani Igga argued in the same session that the Southern census results were doomed by the North's ability to manipulate the overall results, and Makuei defended the referendum

commission's need for a Juba-based operations office by pointing to the marginalization of Southern High Committee on Elections Chairman Cesar Archangelo.

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NEXT STEPS  
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¶10. (U) The CPA-established timeframe for reformed legislation on the southern and Abyei referenda has long-since past - the two laws were to be adopted in 2007, and the corresponding commissions established shortly thereafter. Makuei noted that the SPLM had originally insisted that the referendum law be passed before the National Assembly's recess, but the Assembly recessed on June 24, and will not return until October. Makuei said that the negotiations on these issues will move from the joint SPLM/NCP Executive Committee talks to the NCRC. The latter is set to meet every Saturday and Sunday and aim for a breakthrough - and a draft law for the GNU cabinet's consideration - by September. Makuei cautioned, however, that "we should not be surprised" if the Assembly ultimately dissolves to prepare for 2010 elections without having taken action on key legislation.

¶11. (SBU) NCRC Co-Chair Abdulla Idris told poloffs on June 25 in Khartoum that the SPLM approached the body two weeks ago on the referendum law, saying that it had reached a "deadlock" with the NCP on the draft legislation. The SPLM requested the NCRC act as broker between the NCP and the SPLM, as well as other opposition parties, to find consensus on a draft Referendum Bill so that it could be tabled before the Parliament before elections are held. Idris said that the NCRC responded by establishing a 15-person sub-committee composed of NCP, SPLM and other opposition parties representatives to debate the bill. According to Idris, GoSS Minister Makuei acts as the lead SPLM negotiator on the bill and Ibrahim Ghandour, the powerful parliamentarian and president of the Sudan Workers Trade Union Federation, serves as the lead NCP negotiator. Other committee members include former National Democratic Alliance (NDA) Secretary Faroug Abu Eissa, State Minister of Justice Wek Mamer Kuol (SPLM), and Chairperson of the National Assembly's Legal Committee Badria Suleiman (NCP).

¶12. (SBU) Idris said that the sub-committee has decided to set aside  
KHARTOUM 00000794 003 OF 003

the most contentious issues of the bill for now - the definition of who may vote and whether the Referendum-Commission Juba Office will have exclusive power - in order to make some progress in moving forward. He noted that the NCRC should be able to finish the bill by the time Parliament reconvenes in October, so that it can be tabled and debated before elections are held. If the elections date slides, that's one thing, said Idris, but if we [the NCRC, GoSS and GNU] do not meet the 2011 Southern Sudan referendum deadline [of January 2011], the South may spin out of control.

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COMMENT  
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¶13. (SBU) Makuei's assessment of the stalled status of national-level legislation, such as the Security Law and the Referendum Bill - despite Kiir's June 21 travel to Khartoum and the NCP's veiled promise to "deliver" on at least the Referendum Law prior to the Washington CPA Conference is troubling. Moreover, the SPLM's decision to try to force the tabling before the National Assembly of a National Security Act that the SPLM itself admits is unacceptable is a bad start to reform of laws necessary to create a free and fair environment for 2010 national elections. The USG should stress that the contentious issues of the Security and Referendum Bills must be sorted out among the parties, so that elections can proceed properly from the outset. This will allow Referendum planning to begin in earnest, including the essential task of looking at what follows the January 2011 referendum, whatever its outcome.

WHITEHEAD